

House Bill 969 (AS PASSED HOUSE AND SENATE)

By: Representatives Maxwell of the 17th, Benton of the 31st, Coleman of the 97th, Talton of the 145th, Buckner of the 130th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 47 of the Official Code of Georgia Annotated, relating to retirement and
2 pensions, so as to amend certain provisions to comply with federal law; to provide for
3 benefits for members of public retirement systems in qualified military service; to provide
4 for required minimum distributions; to define certain terms relative to conformity with
5 federal law; to define certain terms relative to the Teachers Retirement System of Georgia;
6 to provide for employee contributions; to provide for application for certain creditable
7 service; to clarify provisions relative to post-retirement employment; to amend certain
8 provisions relative to disability retirement; to amend certain provisions relative to retirement
9 under the Public School Employees Retirement System; to provide an effective date; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 47 of the Official Code of Georgia Annotated, relating to retirement and pensions, is
14 amended by revising subsection (b) of Code Section 47-1-62, relating to procedure for
15 establishment of creditable service, computations, employer contributions, and system or
16 fund unable to provide creditable service, as follows:

17 "(b)(1) At the time a qualified returning veteran applies for creditable service as provided
18 in Code Section 47-1-61, the board of trustees of the public retirement system or fund
19 shall compute the actuarial value of the creditable service to be granted.

20 (2) The board of trustees of a retirement system or fund which requires employer
21 contributions shall notify the employer of the returning veteran of the actuarial value, less
22 the amount of employee contribution. The employer shall pay such amount to the
23 retirement system over the same period of time allowed for the returning veteran to pay
24 the employee contributions; provided, however, that an employer shall not be required
25 to make any payment until the fiscal year following the year such notice is given.

(3) If the actuary employed by a retirement system or fund created by this title which does not require an employer contribution certifies that the system or fund cannot provide the creditable service requested by one or more returning veterans and retain its actuarial soundness, no discretionary benefit increases shall be granted, and the board of trustees of such system or fund shall notify the Governor and chairpersons of the Senate and House Committees on Retirement, providing a full explanation of the amount of funds necessary to return the system or fund to actuarial soundness.

(4) If a member of a public retirement system dies while performing qualified military service, as such term is defined in Section 414(U) of the federal Internal Revenue Code, the member's beneficiary shall be entitled to all additional benefits to which the beneficiary would have been entitled if the member had resumed employment with the employer, reentered the plan, and died immediately thereafter. Unless otherwise required by Code Section 38-2-279, additional benefits to beneficiaries shall not include benefit accruals for the period of qualified military service.

(5) If an employer pays differential wage payments, as such term is defined in Section 3401(h) of the federal Internal Revenue Code, to a member of a public retirement system while such member is in qualified military service, such payments shall be taken into account as compensation by the public retirement system or fund."

SECTION 2.

Said title is further amended by adding two new subsections to Code Section 47-1-80.1, relating to provisions applicable to all public retirement or pension systems, maximum annuity paid, and limitation on death and disability benefits, to read as follows:

"(d) Except as otherwise provided in subsection (e) of this Code section, a member or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the federal Internal Revenue Code shall not receive those distributions for 2009 unless the member or beneficiary chooses to receive such distributions. Such members and beneficiaries shall be given the opportunity to elect to receive such distributions. In addition, notwithstanding the provisions of Code Section 47-1-81, and solely for purposes of applying the direct rollover provisions of the federal Internal Revenue Code, 2009 required minimum distributions shall be treated as eligible rollover distributions. This subsection shall also apply to required minimum distributions after 2009 if federal law is extended to include such later years.

(e) A public retirement or pension system to which subsection (d) of this Code section applies may choose a default option to pay 2009 required minimum distributions unless otherwise elected by the member, provided that the individual system adopt such a default rule for its members only in its plan documents."

SECTION 3.

Said title is further amended by revising subsections (a) and (b) of Code Section 47-1-82, relating to maximum benefit limited to that allowed by federal law, nonannuity benefit, reduction, and adjustments, as follows:

"(a) As used in this Code section, the term:

(1) 'Annual benefit' means a retirement benefit under the public retirement or pension system which is payable annually in the form of a straight life annuity.

(2) 'Applicable mortality table' means the table prescribed by the federal Internal Revenue Code or the secretary of the treasury of the United States in Revenue Ruling 95-6 or any successor thereto which prescribes the mortality table to be applied pursuant to Section 415(b)(2)(E)(v) of the federal Internal Revenue Code; provided, however, that the board of trustees of a public retirement system may adopt a different definition of such term in the retirement system plan document. ~~To the extent that a forfeiture does not occur upon death, the mortality decrement may be ignored prior to age 62 and shall be ignored after social security retirement age, as prescribed by federal Internal Revenue Service Notice 83-10, Q&A G-3 and G-4, or any successor thereto.~~

(3) 'Compensation' means, for purposes of applying the limitations of Section 415 of the federal Internal Revenue Code and for no other purpose, a plan member's wages as defined in Section 3401(a) of the federal Internal Revenue Code (wages subject to income tax withholding at the source, but without regard to exceptions contained in Section 3401(a) of the federal Internal Revenue Code for wages based on the nature or location of the employment or the services performed). The term shall also include the following:

(A) For limitation years beginning on or after December 31, 1997, for purposes of applying the limitations of Section 415 of the federal Internal Revenue Code, amounts that would otherwise be included in compensation but for an election under Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), and 457(b) of the federal Internal Revenue Code;

(B) For limitation years beginning after December 31, 2000, any elective amounts that are not includable in the plan member's gross income by reason of Section 132(f) of the federal Internal Revenue Code, relating to qualified transportation plan; and

(C) For limitation years beginning on and after January 1, 2007, compensation paid by the later of 2 1/2 months after the plan member's severance from employment or the end of the limitation year that includes the date of the plan member's severance from employment if:

(i) The payment is regular compensation for services during the plan member's regular working hours or compensation for services outside the plan member's regular

working hours, including without limitation overtime or shift differential, commissions, bonuses, or other similar payments, and, absent a severance from employment, the payment would have been paid to the plan member while he or she continued in employment with the employer; or

(ii) The payment is for unused accrued bona fide sick leave, vacation leave, or the leave that the member would have been able to use if employment had continued.

'Compensation' also includes back pay, within the meaning of Treasury Regulation Section 1.415 (c)-2(g)(8), for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included in this definition.

(4) 'Dollar limitation' means the maximum permissible amount as such term is defined in paragraph (6) of this subsection.

(5) 'Limitation year' means the plan calendar year; provided, however, that the board of trustees of a public retirement system may adopt a different definition of such term in the retirement system plan document.

(6) 'Maximum permissible amount' means:

(A) For limitation years beginning prior to January 1, 1995, 100 percent of the plan member's average compensation for the period of three consecutive years during which the plan member has the highest aggregate compensation from the employer;

(B) For limitation years beginning on and after January 1, 1995, but before January 1, 2001, \$90,000; and

(C) For limitation years beginning on and after January 1, 2002, \$160,000.00, as adjusted by the secretary of the treasury of the United States for each calendar year, with the new limitation to apply to limitation years ending within the calendar year of the date of the adjustment.

(7) 'Nonannuity benefit form' means a benefit, whether a normal form or an optional form, which is not payable in a straight life annuity for the life of the plan member.

(b) Notwithstanding any other provisions of this title to the contrary, the maximum annual additions and the maximum benefit payable to any active or retired member or beneficiary of a retirement or pension system subject to this title shall be limited to such extent as may be necessary to conform to the requirements of subsections (b) and (c) of Section 415 of the federal Internal Revenue Code for a qualified retirement plan.

(c) If a plan member's benefit is payable in a nonannuity benefit form, whether as the normal form of benefit or as an optional form which the plan member or his or her designated beneficiary elects, the nonannuity benefit form shall be adjusted to an annual benefit as described in subsections (d) and (e) of this Code section. No actuarial adjustment to the nonannuity benefit form shall be required for:

(1) The value of a qualified joint and survivor annuity; or

(2) The value of benefits that are not directly related to retirement benefits, such as a disability benefit, preretirement death benefits, and postretirement medical benefits; ~~or~~

~~(3) The value of postretirement cost-of-living increases provided that the amount payable to the plan member under the nonannuity benefit form in any limitation year shall not be greater than the Section 415(b) of the federal Internal Revenue Code limit applicable at the annuity starting date as increased in subsequent years pursuant to Section 415(d) of the federal Internal Revenue Code and Section 1.415(d)-1 of the Treasury Regulations.~~

The determination of the annual benefit shall disregard benefits attributable to employee contributions or rollover contributions or the assets transferred from a qualified plan that was not maintained by an employer."

SECTION 4.

Said title is further amended by revising paragraphs (11) and (28) of Code Section 47-3-1, relating to definitions relative to the Teachers Retirement System of Georgia, as follows:

"(11) 'Earnable compensation' means the full rate of regular compensation payable to a member for his full normal working time and includes compensation paid to a member by an employer from grants or contracts made by outside agencies with the employer. All moneys paid by an employer for a member or by a member into any plan of tax sheltered annuity shall be included as earnable compensation for the purpose of computing any contributions required to be made to the retirement system and also for the purpose of computing any benefits or allowances payable under this chapter. Such term shall include contributions made to a qualified transportation plan, within the meaning of Section 132(f) of the federal Internal Revenue Code, and before tax or salary deferral contributions made under Sections 125, 401(k), 402(g)(3), 457, or 414(h) of the federal Internal Revenue Code to this retirement system or to any other retirement plan maintained by an employer."

"(28) 'Teacher' means:

(A) Any of the following persons employed not less than half time by a public school:

(i) Persons who supervise the public schools;

(ii) Classroom teachers; and

(iii) Persons employed in a clerical capacity;

(B) Public school nurses who are employed on a regular basis as much as one-half time or more. The employer's contributions for such public school nurses on all salary amounts which are not paid from state funds shall be paid from local funds;

(C) School librarians;

(D) Administrative officials who supervise teachers;

(E) Full-time public school lunchroom managers or supervisors, full-time public school maintenance managers or supervisors, full-time public school transportation managers or supervisors, and full-time public school warehouse managers or supervisors, upon electing to participate in the retirement system pursuant to Code Section 47-3-63;

(F) Any new certified professional personnel employed for the first time by the State Board of Education or by the State Department of Education on and after July 1, 1983, unless such personnel elect membership in the Employees' Retirement System of Georgia pursuant to subsection (h) of Code Section 47-3-60, and any employee of the State Board of Education or the State Board of Vocational Education employed in a teaching, supervisory, or clerical capacity;

(F.1) Certified professional personnel who are in the unclassified service of the State Personnel Administration and who are employed by the State Board of Education or by the State Department of Education and who become members of this retirement system pursuant to the authority of subsection (i) of Code Section 47-3-60;

(F.2) Newly hired professional personnel employed for the first time by the Technical College System of Georgia on and after July 1, 1985, and all full-time nonprofessional personnel employed for the first time after July 1, 1987, by postsecondary vocational-technical schools governed by the Technical College System of Georgia if otherwise eligible under laws, rules, and regulations, unless such personnel elect membership in the Employees' Retirement System of Georgia pursuant to subsection (j) of Code Section 47-3-60;

(F.3) All full-time employees of a postsecondary vocational-technical school formerly operated by a local board of education or area postsecondary vocational education board as of July 1, 1987, or the date on which the Technical College System of Georgia assumes governance of the postsecondary vocational-technical school if otherwise eligible under laws, rules, and regulations, unless such personnel elect membership in the Employees' Retirement System of Georgia pursuant to subsection (j) of Code Section 47-3-60;

(F.4) Personnel employed by the State Board of Education or by the State Department of Education who are authorized to elect and elect to become or remain members of the retirement system pursuant to the applicable provisions of Code Section 47-3-60;

(G) Any bona fide teacher, supervisor of teachers, or clerical employee in any school operated by the Department of Education;

(H) Teacher aides and paraprofessional personnel and members of the staff of any regional educational service agency created pursuant to Code Sections 20-2-270 through 20-2-274;

(I) Registrars of each unit of the University System of Georgia;

(J) The secretary and treasurer of the Board of Regents of the University System of Georgia;

(K) Teachers, supervisors of teachers, and clerical workers who are employed and paid by the Board of Regents of the University System of Georgia;

(L) All personnel of the Cooperative Extension Service of the University of Georgia;

(M) Any other person employed not less than on a half-time basis and paid by the Board of Regents of the University System of Georgia, with the exception of such maintenance and custodial employees employed prior to July 1, 1978, who elected to forgo membership, provided that the board of trustees shall determine whether any particular employee is a maintenance or custodial employee;

(N) Any full-time employee of the Georgia Association of Educators, Georgia High School Association, or Georgia School Boards Association, provided that such association, as appropriate, and the employee request that the board of trustees permit them to pay the employer and employee contributions, respectively. The state shall make no contributions on account of such employee;

(O) Librarians and clerical personnel employed by regional and county libraries. Any of such librarians and clerical personnel who were members of a local retirement system on January 1, 1977, and who elected to remain members of such local retirement system shall not be required to become members of this retirement system, or if they were members of this retirement system on that date, they may withdraw from such membership. This election must have been made, in writing, to the board of trustees by not later than January 1, 1978. Any of such librarians and clerical personnel failing to so notify the board of trustees by that date shall be members of this retirement system. The employer contributions for such librarians and clerical personnel who are or who become members of this retirement system shall be paid from local funds on all salary amounts of such librarians and clerical personnel which are not paid from state funds. Prior service of such librarians and other service for which such librarians have contributed to the Teachers Retirement System of Georgia is ratified, subject to the same laws and the same rules and regulations applicable to other members of this retirement system;

(P) The full-time executive secretary of the Georgia Vocational Association. Such association shall pay the required employer contribution for membership service. The executive secretary shall be entitled to receive credit for prior teaching service by paying the employee and employer contributions that would have been paid, plus interest at the rate of 8 percent per annum; and

(Q) Attendance officers employed not less than half time for service rendered after June 30, 1992. As used in this subparagraph, 'attendance officer' means an attendance

officer employed in lieu of a visiting teacher under Subpart 2 of Part 1 of Article 16 of Chapter 2 of Title 20; provided, however, that the provisions of this subparagraph shall not apply to any former member employed as an attendance officer who retired prior to July 1, 1992.

The term 'teacher' shall not be deemed to include any emergency or temporary employee. The term 'teacher' shall not include an individual classified by an employer as an independent contractor or a leased employee within the meaning of Section 414(n) of the federal Internal Revenue Code, even if such individual is later reclassified by the Internal Revenue Service as a common law employee. The board of trustees shall determine in doubtful cases whether any person is included within the definition set forth in this paragraph. Notwithstanding the provisions of subparagraphs (N) and (P) of this paragraph (28) of this Code section, no person becoming an employee of the Georgia Association of Educators, the Georgia High School Association, or the Georgia School Boards Association or becoming the executive secretary of the Georgia Vocational Association after June 30, 1984, shall be a 'teacher' within the meaning of this paragraph (28) of this Code section or shall be eligible for membership in the retirement system provided for by this chapter unless the person holding any such position is also a 'teacher' within the meaning of a subparagraph of this paragraph (28) of this Code section other than subparagraph (N) or (P) of this paragraph. Except as otherwise provided by Code Section 47-3-84.2, subparagraphs (N) and (P) of this paragraph (28) of this Code section shall remain effective after June 30, 1984, only for the purpose of allowing any person who was a member of the retirement system on June 30, 1984, because the person held a position specified by ~~said~~ subparagraph (N) or (P) of this paragraph to continue such membership as long as the person continues to hold such position."

SECTION 5.

Said title is further amended by adding a new paragraph to Code Section 47-3-1, relating to definitions relative to the Teachers Retirement System of Georgia, to read as follows:

"(19.1) 'Plan year' means the 12 month period beginning on July 1 of each year."

SECTION 6.

Said title is further amended by revising subsection (e) of Code Section 47-3-41.1, relating to payment of employee contributions by employers, as follows:

"(e) The employee contributions provided for in this Code section are mandatory, and no member is entitled under any circumstances to receive such contributions in cash in lieu of having them contributed to the retirement system. Such contributions shall be 100 percent vested for all purposes under the retirement system. ~~Reserved.~~"

SECTION 7.

Said title is further amended by revising subsection (a) of Code Section 47-3-93, relating to additional creditable service for members with at least 25 years of creditable service, as follows:

"(a) Any member of this retirement system who has accrued at least 25 years of creditable service may obtain up to an additional three years of creditable service as provided in this Code section. In order to obtain such additional creditable service, the member must:

(1) Make application to the board of trustees in such manner as the board deems appropriate; and

(2) Pay to the board of trustees an amount determined by the board of trustees to be sufficient to cover the full actuarial cost of granting the creditable service as provided in this Code section.

Such application and payment must be made in conjunction with and simultaneously with the member's application for retirement. If the application for retirement is withdrawn or denied, the application to purchase creditable service shall be void."

SECTION 8.

Said title is further amended by revising subsections (a) and (b) of Code Section 47-3-101, relating to eligibility and application for retirement, duration of benefits paid to a retired member, and payment to maintain Teachers Retirement System of Georgia, as follows:

"(a) Any member in service may retire upon written application to the board of trustees, provided that the member at the time of retirement: (1) has attained the age of 60 years and has at least ten years of creditable service, or (2) has at least 25 years of creditable service. The effective date of retirement will be the first of the month in which the application is received by the board of trustees; except that no retirement application will be effective earlier than the first of the month following the final month of the applicant's employment. Applications for retirement will not be accepted more than 180 days in advance of the effective date of retirement. Each employer shall certify to the board of trustees the date on which the employee's employment is or will be severed and that no agreement exists to allow the employee to return to service, including service as or for an independent contractor. Any return to employment or rendering of any paid service, including service as or for an independent contractor, for any employer during the calendar month of the effective date of retirement shall render the severance invalid and nullify the application for retirement.

(b) For purposes of this chapter, normal retirement age shall be 60 years of age if the member has at least ten years of creditable service or the age of the member on the date he or she attains 30 years of creditable service, whichever event comes first; provided,

317 however, that the provisions of this subsection shall be subject to change by future
318 legislation in order to comply with federal regulations. Except as provided under Article
319 3 of Chapter 1 of this chapter, a member's right to his or her retirement allowance is
320 nonforfeitable upon attainment of normal retirement age. ~~Reserved.~~"

321 **SECTION 9.**

322 Said title is further amended by revising paragraph (2) of subsection (c) of Code Section
323 47-3-122, relating to eligibility and application for disability benefits, amount of disability
324 benefits, reexamination of recipients, and reduction, as follows:

325 "(2) An annual pension computed under the formula set forth in subsection (a) of Code
326 Section 47-3-120, but with no reduction in benefits set forth in subsection (b) of Code
327 Section 47-3-120 for retirement under the age of ~~62~~ 60."

328 **SECTION 10.**

329 Said title is further amended by revising subsection (e) of Code Section 47-3-122, relating
330 to eligibility and application for disability benefits, amount of disability benefits,
331 reexamination of recipients, and reduction, as follows:

332 "(e) Once each year during the first five years following retirement of a member on a
333 disability retirement allowance and once in every three-year period thereafter, the board
334 of trustees may require a disability beneficiary who has not yet attained age ~~62~~ 60 to
335 undergo a medical examination, such examination to be made at his place of residence or
336 other place mutually agreed upon, by a physician or physicians designated by the medical
337 board. Such beneficiary may himself request such an examination. If any disability
338 beneficiary who has not yet attained age ~~62~~ 60 refuses to submit to such medical
339 examination, his pension may be discontinued by the board of trustees until his withdrawal
340 of such refusal; and if his refusal continues for one year, all his rights in and to his pension
341 may be revoked by the board of trustees."

342 **SECTION 11.**

343 Said title is further amended by revising Code Section 47-4-106, relating to return to public
344 service of retired members of the Public School Employees Retirement System, as follows:

345 "47-4-106.

346 (a) If any retired member who has not yet reached normal retirement age returns to service
347 as a public school employee in any position which normally requires membership in this
348 retirement system, such member's retirement benefit shall cease and the retired member
349 shall reestablish active membership in this retirement system. The member shall have the
350 same creditable service which the member possessed at the time of retirement and shall

accumulate additional creditable service so long as such active membership continues. Upon cessation of such service, or upon attainment of normal retirement age and cessation of contributions, the retired member, after proper notification to the board, shall receive a retirement benefit based on the member's total accrued service reduced by any amount already received prior to reemployment.

(b) If any retired member who has reached normal retirement age returns to service as a public school employee in any position that would normally require membership in this retirement system, such member shall have the option to:

(1) Contribute to the system, in which event the member's retirement benefit shall cease and the retired member shall reestablish active membership in this retirement system.

The member shall have the same creditable service which the member possessed at the time of retirement and shall accumulate additional creditable service so long as such active membership continues. Upon cessation of such service, the retired member, after proper notification to the board, shall receive a retirement benefit based on the member's total accrued service reduced by any amounts already received; or

(2) Not contribute to the system, in which event the member's retirement benefit shall not cease, and no additional benefits will accrue.

(c) Any employer which employs a retired member shall within 30 days of the employee's accepting employment notify the board of trustees in writing stating the name of the member and, if the retired member is age 65 or older, shall provide in writing from the retired member his or her election either to discontinue benefits and resume contributions, or to continue receiving retirement benefits and accrue no additional credits under the retirement system. Any employer which fails to notify the board of trustees as required by this subsection shall reimburse the retirement system for any benefits wrongfully paid. It shall be the duty of the retired member seeking employment by the employer to notify the employer of his or her retirement status prior to accepting such position. If a retired member fails to so notify the employer and the employer becomes liable to the retirement system, the member shall hold the employer harmless for all such liability."

SECTION 12.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 13.

All laws and parts of laws in conflict with this Act are repealed.